D.B. CIVIL SPECIAL APPEAL (WRIT) NO. 12/2006
(Raj Kumar Godha Vs. State of Rajasthan & another)

Date of order : 24.05.2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE DINESH MAHESHWARI

Shri Sanjeet Purohit with Mr.Dinesh Kumar Sharma for the appellant.
Shri S.N.Tiwari, Dy.G.A.

This appeal is directed against the order of the learned Single Judge dated 16.11.2005 in S.B.Civil Writ Petition No.2777/2004 rejecting the application of the appellant, who figures as respondent in the writ petition before the Single Judge, under Section 17-B of the Industrial Disputes Act, 1947 (`the Act' for short). The learned Single Judge took the view that as the stay application filed by the State had been rejected, it is open to the workman to get the award implemented for which appropriate procedure has been prescribed under the Industrial Disputes Act, and accordingly rejected the application under Section 17-B.

Section 17-B of the Act provides that where a Labour Court/Tribunal by its award directs reinstatement of any workman and the employer prefers proceedings against such award in a High Court or the Supreme Court, "the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the

Supreme Court, full wages last drawn by him,....." In terms of the proviso, when it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during such period i.e. during the period of pendency of proceedings in the High Court or the Supreme Court, no direction for payment of wages for such period shall be made.

On a bare reading of the provision it would appear that Section 17-B of the Act creates not only a right in favour of the workman but also casts a mandate upon the Court to consider the application of the workman for payment of wages during pendency of the proceedings in the High Court/Supreme Court as the case may be. Such a mandate cannot be nullified on the ground that award of Labour Court/Tribunal can be implemented by the workman. Without going into the question as to whether the remedy provided to the workman in the case of non-implementation of the award is adequate or not in the sense it would secure wages to him during pendency of the proceedings in the High Court or the Supreme Court, we are of the opinion that in view of the mandate of law, a positive order is required to be passed one way or the other on the application of the workman.

In course of hearing, our attention was drawn to the stand of the State in the reply to the effect that the appellant-

workman has been working as a commission agent and, therefore, he is not entitled to wages in terms of Section 17-B. Since the matter is being sent back to the Single Judge we are not inclined to consider the question whether work of commission agent is covered by the clause "had been employed and had been receiving adequate remuneration" within the meaning of proviso to Section 17-B. We are told that copy of the reply was not served on the appellant and appellant thus had no occasion to deal with the stand of the State. As no positive order one way or the other has been finally passed on the application of the workman, we are of the view that the matter may be considered on merits by the learned Single Judge. The order of the learned Single Judge in the circumstances is set aside with the direction that the application under Section 17-B of the Act be put up for fresh consideration before the learned Single Judge.

Copy of the reply of the State to the application under Section 17-B be served on the workman-appellant and he may file rejoinder thereto.

The appeal stands disposed of.

(DINESH MAHESHWARI), J. **(S.N. JHA), C.J.**

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